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**Elmhurst Lincoln Mercury and Automobile Mechanics Local 701, International Association of Machinists and Aerospace Workers, AFL-CIO.**  
Case 13-CA-45759

September 21, 2010

**DECISION AND ORDER**

BY MEMBERS BECKER, PEARCE, AND HAYES

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by Automobile Mechanics Local 701, International Association of Machinists and Aerospace Workers, AFL-CIO (the Union), on January 6, 2010, the General Counsel issued the complaint on March 24, 2010, against Elmhurst Lincoln Mercury (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On May 11, 2010, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on May 13, 2010, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause<sup>1</sup> why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received on or before April 7, 2010, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated April 13, 2010, notified the Respondent that unless an answer was received by April 20, 2010, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

<sup>1</sup> On June 17, 2010, another copy of the Notice to Show Cause was sent to the Respondent.

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times the Respondent, a Delaware corporation, with an office and place of business in Elmhurst, Illinois, has been engaged in the sale and service of new and used automobiles.

During the calendar year preceding issuance of the complaint, a representative period, the Respondent, in conducting the business described above, derived gross revenues in excess of \$500,000 and purchased and received at its facility goods valued in excess of \$5000 directly from points outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICE**

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

David Mears	Chairman
John Moroni	President

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, and semi-skilled technicians.

At all material times the Respondent has been an employer-member of the New Car Dealer Committee (the Committee), a multiemployer association, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with the Union. At all material times, the Respondent has authorized the Committee to represent it in negotiating and administering collective-bargaining agreements with the Union.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the multiemployer association unit and has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective August 1, 2005, through July 31, 2009.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the multiemployer association unit.

On about August 1, 2009, the Union and the Committee reached a complete agreement on terms and conditions of employment of the unit that was incorporated in a collective-bargaining agreement (the 2009 agreement).

Since about October 2009, the Union, by Thomas Gregg, has requested that the Respondent execute the 2009 agreement described above.

Since about December 11, 2009, the Respondent, by David Mears, has failed and refused to execute the 2009 agreement described above.

#### CONCLUSION OF LAW

By failing and refusing to execute the 2009 agreement, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing, since about December 11, 2009, to execute the collective-bargaining agreement reached on August 1, 2009, we shall order the Respondent to execute and implement the agreement and give retroactive effect to its terms. We shall also order the Respondent to make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's refusal to execute the 2009 agreement, as set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Elmhurst Lincoln Mercury, Elmhurst, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Automobile Mechanics Local 701, International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive collective-bargaining representative of the unit described below, by failing and refusing to execute the collective-bargaining agreement

reached on August 1, 2009, regarding the terms and conditions of employment of unit employees. The unit is:

All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, and semi-skilled technicians.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Execute and implement the collective-bargaining agreement reached on August 1, 2009, give retroactive effect to the agreement's terms and conditions of employment, and make unit employees whole for any loss of earnings and other benefits they have suffered as a result of the Respondent's failure to execute the agreement, with interest, as set forth in the remedy section of this Decision.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility in Elmhurst, Illinois, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 11, 2009.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

sponsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 21, 2010

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Craig Becker,	Member
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Mark Gaston Pearce,	Member
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Brian E. Hayes,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

##### NOTICE TO EMPLOYEES

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Automobile Mechanics Local 701, International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive collective-bargaining representative of our employees in the unit described below, by failing and refusing to execute the collective-bargaining agreement reached on August 1, 2009, regarding the terms and conditions of employment of unit employees. The unit is:

All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, and semi-skilled technicians.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL execute and implement the collective-bargaining agreement reached on August 1, 2009, give retroactive effect to the agreement's terms and conditions of employment, and WE WILL make unit employees whole for any loss of earnings and other benefits they have suffered as a result of our failure to execute the agreement, with interest.

ELMHURST LINCOLN MERCURY